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AD HOC GROUP ON THE BERLIN MANDATE
Fifth session
Geneva, 9-13 December 1996
Item 1 (a) of the provisional agenda

# PROVISIONAL AGENDA AND ANNOTATIONS

## Note by the Executive Secretary

## I. INTRODUCTION

1. Arrangements have been made for the fifth session of the Ad Hoc Group on the Berlin Mandate (AGBM) to be held at the Palais des Nations, Geneva, from 9 to 13 December 1996. The session will be opened by the Chairman at 10 a.m. on Monday, 9 December 1996, in conference room XIX. The afternoon of Monday, 9 December will be dedicated to an informal round table on the proposals submitted by Parties.

2. The AGBM, at its fourth session, concluded that valuable progress had been made over the past year but that "much work still needed to be done and the AGBM must now intensify its efforts to complete a new legal instrument in time for adoption by the Conference of the Parties at its third session (COP 3)". It was further concluded that the analysis and assessment process should continue but that "the emphasis of the work of the AGBM must now move progressively towards negotiation, as mandated by decision 1/CP.1" (FCCC/AGBM/1996/8/paras. 35-36).

3. The Conference of the Parties at its second session (COP 2) took note of the Geneva Ministerial Declaration which commanded a very wide consensus among ministers and other heads of delegation attending the Conference but gave rise to some concern or difficulties

for some delegations. (For the text of the Declaration, see the annex to FCCC/CP/1996/15/Add.1; for the proceedings of the Conference, see FCCC/CP/1996/15, para. 40; for the views expressed by delegations, see FCCC/CP/1996/15, annex IV.) The Ministers and other heads of delegations, through the Declaration, expressed the view that the Second Assessment Report of the Intergovernmental Panel on Climate Change (IPCC) "should provide a scientific basis for urgently strengthening action at the global, regional and national levels, particularly action by Annex I Parties to limit and reduce emissions of greenhouse gases, and for all Parties to support the development of a Protocol or another legal instrument." Furthermore they "call[ed] on all Parties to come forward with proposals to facilitate substantive negotiations beginning at the fifth session of the AGBM." In addition, they "instruct[ed] their representatives to accelerate negotiations on the text of a legally-binding protocol or another legal instrument to be completed in due time for adoption at [COP 3]. The outcome should fully encompass the remit of the Berlin Mandate." Specific elements of the Declaration that are relevant to provisional agenda items are found in paragraphs 8 and 10 of the Declaration.

## II. PROVISIONAL AGENDA

4. The provisional agenda for the fifth session of the AGBM, proposed after consultation with the Chairman, is as follows:

1. Opening of the session.

2. Organizational matters:

   (a) Adoption of the agenda;
   (b) Organization of the work of the session;
   (c) Organization of the work of future sessions.

3. Strengthening the commitments in Article 4.2(a) and (b):

   (a) Policies and measures;
   (b) Quantified emission limitation and reduction objectives within specified time-frames.

4. Continuing to advance the implementation of existing commitments in Article 4.1.

5. Possible features of a protocol or another legal instrument.

6. Report on the session.

## III. ANNOTATIONS TO THE PROVISIONAL AGENDA

### 1. Opening of the session

5. The fifth session of the Ad Hoc Group on the Berlin Mandate (AGBM) will be opened by the Chairman at 10 a.m. on Monday, 9 December 1996 in conference room XIX.

### 2. Organizational matters

#### (a) Adoption of the agenda

6. The provisional agenda for the fifth session of the AGBM is presented for adoption (see para. 4 above).

#### (b) Organization of the work of the session

(i) Documentation

7. A list of documents relating to the provisional agenda, as well as other documents available at the session, is contained in annex I below.

8. In accordance with the conclusions of the AGBM at its fourth session (see FCCC/AGBM/1996/8, paras. 37-38), the main documents for the session will consist of the proposals submitted by Parties prior to COP 2 (FCCC/1996/AGBM/MISC.2 and Add.1) and any submitted prior to 15 October 1996 (FCCC/1996/AGBM/MISC.2/Add.2) as well as the synthesis of these proposals prepared by the Chairman (FCCC/AGBM/1996/10).

(ii) Schedule

9. The scheduling of meetings for the session will be based on the availability of facilities during normal working hours, when services are available for one meeting with interpretation from 10 a.m. to 1 p.m. and from 3 p.m. to 6 p.m. There will also be some facilities for informal meetings without interpretation. Delegations are urged to use these facilities fully by starting all meetings promptly at the scheduled time. A suggested approach to the organization of work is contained in annex II below.

10. The afternoon of Monday, 9 December has been set aside for an informal round table discussion of the proposals submitted by Parties (FCCC/AGBM/1996/MISC.2/and Add.1 and 2), with an emphasis on those received since the fourth session of the AGBM. Submitting Parties will have the opportunity to present and discuss their proposals, followed by comments, questions and discussions.

11. An informal consultation will be convened by the Chairman on the margins of the session to discuss the question of the impacts on developing countries of new commitments by Annex I Parties to limit and reduce emissions and to consider what analysis and assessment is necessary in this regard.

### (c) Organization of the work of future sessions

12. It may be useful to look ahead to the programme and structure of the work of future sessions of the AGBM in the light of the conclusions reached at the fifth session and the limited time that remains before COP 3. The Chairman will provide an oral report on the decisions of the Bureau of the COP relating to the schedule of meetings under the Convention in 1997.

13. The AGBM may also wish to consider the timetable for the preparation and consideration of a negotiating text.

14. This item will provide an opportunity to take stock of the magnitude of the overall package of requests to the secretariat and other bodies to confirm that it can be delivered in the short time before the sixth session (3-7 March 1996). In view of this time constraint, the secretariat considers that it would be able to prepare, in addition to the provisional agenda and annotations, at most, one substantive document for the sixth session.

## 3. Strengthening the commitments in Article 4.2(a) and (b)

### (a) Policies and measures

15. In addition to the documents mentioned in annex I below, the AGBM is expected to have before it a technical paper on policies and measures from the Intergovernmental Panel on Climate Change. An oral progress report from the Chairman of the Annex I Experts Group on the UNFCCC is also anticipated.

16. Further to its discussions at the fourth session, the AGBM may wish to concentrate its efforts on further defining the approach to the elaboration of policies and measures that will characterize the protocol or another instrument to be adopted at COP 3. Two general approaches have been identified to date - a menu of options approach and a mandatory policies and measures approach (see FCCC/AGBM/1996/8, para. 16). In this context, issues such as the breadth of any menu, the degree of compulsion to implement particular policies and measures, possible methods for categorizing policies and measures, harmonization or coordination of policies and measures, priority policies and measures, and review and/or coordination mechanisms could be addressed.

**(b) Quantified emission limitation and reduction objectives**

17. In resuming its consideration of this sub-item, the AGBM may wish to address the issues regarding QELROs identified in the report of the last session (FCCC/AGBM/1996/8, para. 18):

(a) The levels of emissions reductions, and criteria for their choice;

(b) Whether QELROs should be legally binding or not;

(c) Whether multi-Party or single-Party obligations should be pursued;

(d) What should be the base and target years;

(e) The socio-economic and environmental costs and benefits for all Parties, including developing country Parties; and

(f) The effect on atmospheric greenhouse gas concentrations.

18. The Subsidiary Body for Scientific and Technological Advice (SBSTA), at its third session, invited the AGBM, should it deem fit, to consider the implications of methodological issues, such as those considered in documents FCCC/SBSTA/1996/9 and Add. 1 and 2 (for examp'e, emissions from bunkers, electricity trading, land-use change emissions, temperature adjustments).

## 4. Continuing to advance the implementation of existing commitments in Article 4.1

19. The AGBM, at its fourth session, deferred consideration of this item until the fifth session. The Group may wish to focus on what new actions, if any, are necessary and what would be the modalities surrounding them, especially in terms of how they would be reflected in the protocol or another legal instrument to be adopted at COP 3.

## 5. Possible features of a protocol or another legal instrument

20. The AGBM, at its third and fourth sessions, held productive discussions of the possible features of a protocol or another legal instrument, including institutional questions. Until the nature of the final commitments becomes clearer, it may be difficult to take the discussion of possible features of a protocol or another legal instrument much further, especially with regard to institutions. Nevertheless, there are a number of questions about the features of the agreement that the AGBM may wish to address that relate directly to the commitments and which may not be taken up under other agenda items. These include:

(a) Issues pertaining to the structure of the commitments, including the role of annexes;

(b) The design of any process for the communication and review of information, including the review of implementation, bearing in mind the earlier support by the AGBM for a single process for the communication and review of information (see FCCC/AGBM/1996/8, para. 28);

(c) The need for, and nature of, any compliance procedure or mechanism as well as any linkage with Article 13 of the Convention and the work of the Ad Hoc Group on Article 13 (see FCCC/CP/1996/15/Add.1, decision 5/CP.2);

(d) The nature of any mechanism to review the commitments over time; and

(e) The threshold for entry into force.

## 6. Report on the session

21. The relatively short length of the session, as well as the nature and timing of the discussion, may affect the extent to which a draft text of the report on the work of the session could be available at the end of the session. The AGBM may wish to adopt decisions or texts of substantive conclusions under the relevant items and sub-items of the agenda and, as at the first session, authorize the Rapporteur to complete the report after the session, under the guidance of the Chairman and with the assistance of the secretariat. While every effort will be made to have conclusions available in all languages, this can only be possible if sufficient time is available for translation.

## Annex I

## DOCUMENTS BEFORE THE AD HOC GROUP ON THE BERLIN MANDATE AT ITS FIFTH SESSION

### Documents prepared for the session

| | |
|---|---|
| FCCC/AGBM/1996/9 | Provisional agenda and annotations |
| FCCC/AGBM/1996/10 | Synthesis of proposals: note by the Chairman |
| FCCC/AGBM/1996/MISC.2/Add.2 | Implementation of the Berlin Mandate: proposals from Parties. |

### Other documents for the session

| | |
|---|---|
| FCCC/AGBM/1996/8 | Report of the Ad Hoc Group on the Berlin Mandate on the work of its fourth session, held at Geneva from 11-16 July 1996 |
| FCCC/CP/1996/15 and Add.1 | Report of the Conference of the Parties on its second session, held at Geneva from 8-19 July 1996 |
| FCCC/AGBM/1996/MISC.2 and Add.1 | Implementation of the Berlin Mandate: proposals from Parties |

### Other documents available at the session for reference purposes

All AGBM documents as well as the Second Assessment Report of the IPCC and the second compilation and synthesis of national communications from Annex I Parties will be available for reference purposes.

## Annex II

## PROPOSED SCHEDULE OF WORK FOR THE FIFTH SESSION OF THE AD HOC GROUP ON THE BERLIN MANDATE

| | Monday<br>9 December | Tuesday<br>10 December | Wednesday<br>11 December | Thursday<br>12 December | Friday<br>13 December |
|---|---|---|---|---|---|
| 10 a.m.<br>to<br>1 p.m. | Items 1<br>2 (a)<br>2 (b) | Item 3 (a) | Item 4 | Informals | Informals |
| 3 p.m.<br>to<br>6 p.m. | Round table<br>on proposals<br>by Parties | Item 3 (b) | Item 5 | Informals | Items 2 (c)<br>6 |

**Items from the provisional agenda:**

1. Opening of the session.

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   (a) Policies and measures;
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5. Possible features of a protocol or another legal instrument.

6. Report on the session.

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Fifth session
Geneva, 9-13 December 1996
Items 3, 4 and 5 of the provisional agenda

# SYNTHESIS OF PROPOSALS BY PARTIES

## Note by the Chairman

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# I. INTRODUCTION

## A. Mandate

1. At its fourth session, the Chairman of the Ad Hoc Group on the Berlin Mandate (AGBM) undertook to produce, with the assistance of the secretariat, a contribution to the fifth session that would synthesize all proposals relating to the elements of the Berlin Mandate that have been made by Parties to date, including those received up to 15 October 1996 (FCCC/AGBM/1996/8, para. 38).

## B. Scope of the note

2. This note responds to the above mandate by synthesizing all the proposals made by Parties that are related to the possible elements of the protocol or other legal instrument (hereinafter referred to as "the instrument") to be adopted by the Conference of the Parties at its third session (COP 3). It references the draft protocols and possible protocol structures submitted, and the submissions that have presented possible elements for consideration by the Parties (FCCC/1996/AGBM/MISC.2 and Add.1 and 2).[1] The Chairman has also taken it upon himself to include in the synthesis agreed conclusions reached at previous meetings of the AGBM (FCCC/AGBM/1996/8; FCCC/AGBM/1996/5; and FCCC/AGBM/1995/7).

3. The note also makes reference, where appropriate, to the Geneva Ministerial Declaration, which commanded a very wide consensus among ministers and other heads of delegation attending the Conference of the Parties at its second session (COP 2), although it did give rise to some concern or difficulties for some delegations. (For the text of the Declaration, see FCCC/CP/1996/15/Add.1, annex; for the account of this matter in the proceedings of the Conference, see FCCC/CP/1996/15, paras. 40 and 41; for the views expressed by delegations, see FCCC/CP/1996/15, annex IV).

4. As the AGBM has not yet taken a decision on the type of legal instrument to be adopted at COP 3, this note has been prepared without prejudice to the outcome of discussions on this issue.

5. To be as useful to the AGBM as possible, the note is structured in a manner that parallels the provisional agenda. Within each section, the note outlines key issues that have been raised in the AGBM and synthesizes the proposals that have been made by Parties to address these issues. Occasionally, the note identifies some additional items the AGBM may

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[1] Proposals submitted by the following Parties: Australia, Republic of the Gambia, Germany (2), Ireland (on behalf of the European Community and its member States), Japan, Norway, Russian Federation, Saudi Arabia, Spain (on behalf of the European Community and its member States), Trinidad and Tobago (on behalf of the Alliance of Small Island States), United Kingdom of Great Britain and Northern Ireland (2), United States of America, Zaire.

wish to consider in its deliberations even though they have not been formally raised by Parties in their proposals so far.

6. The AGBM, in accordance with its conclusions and pursuant to some of the proposals made by Parties, will also need to continue to assess the environmental and socio-economic impacts, including those on developing country Parties, of the new commitments to be negotiated for Parties included in Annex I to the Convention (Annex I Parties) with respect to policies and measures and quantified emission limitation and reduction objectives within specified time-frames.

### C. Possible action by the Ad Hoc Group on the Berlin Mandate

7. Given the short time remaining before COP 3, the AGBM may wish to use this synthesis to help identify the key issues that need to be addressed in its upcoming work and to help narrow down the range of options being considered for addressing these issues. The AGBM may also wish to consider which issues need to be discussed in detail for possible inclusion in a protocol or another legal instrument at COP 3 and which can be left for subsequent negotiations. Finally, the Chairman has indicated that he hopes this contribution will provide a useful framework for discussion at the fifth session and that it will be a useful step towards the development of a negotiating text (FCCC/AGBM/1996/8, para. 38).

## II. STRENGTHENING THE COMMITMENTS IN ARTICLE 4.2(a) and (b)

8. At its fourth session, the AGBM concluded that "the elaboration of policies and measures and the development of quantified emission limitation reduction objectives (QELROs) were linked, and that the final product of its work should reflect both policies and measures on the one hand and QELROs on the other" (FCCC/AGBM/1996/8, para. 15).

### A. Policies and measures

#### Approach

9. The AGBM must take a decision on the approach that will be used to elaborate policies and measures within the instrument to be adopted at COP 3.

10. It has been proposed that the instrument include a general commitment by developed country Parties and other Parties listed in "Annex X" (see FCCC/AGBM/MISC.2/Add.2) to adopt and implement policies and take measures within national and, where appropriate, regional programmes referred to in Article 4.1(b) of the Convention to limit and reduce anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol from all relevant sectors...and to protect and enhance greenhouse gas sinks and reservoirs.

11. Two general approaches to the elaboration of policies and measures have been the focus of discussion within the AGBM up to now (FCCC/AGBM/1996/8, para. 16):

- A "menu approach", under which the protocol or another legal instrument could provide for a detailed listing of policies and measures, from which Annex I Parties could choose on the basis of their national circumstances, or

- A mandatory approach, under which the new legal instrument would require certain common and/or coordinated policies and measures. One specific proposal is to develop separate annexes setting forth:

  - mandatory policies and measures;
  - coordinated policies and measures; and
  - optional policies and measures.

When considering these different approaches, the AGBM could address issues such as the breadth and scope of policies and measures to be included, possible priority policies and measures, the degree of compulsion envisioned, the extent to which policies and measures should be coordinated or harmonized and the modalities surrounding possible common measures.

Content

12. The AGBM must take a decision on the specific policies and measures to be included in the instrument. In this regard, the AGBM may wish to take into account the text of the Geneva Ministerial Declaration (see paragraph 3 above), which calls for an outcome to the Berlin Mandate process that encompasses, *inter alia*, "policies and measures including, as appropriate, regarding energy, transport, industry, agriculture, forestry, waste management, economic instruments, institutions and mechanisms".

13. Proposals made by Parties with respect to the identification of policies and measures that might be elaborated in the instrument can be characterized in three ways:

- Proposals with respect to the mechanisms for implementing policies and measures

- Proposals with respect to the policy objectives to be pursued by means of policies and measures

- Proposals with respect to specific policies and measures that could be included in a protocol or another legal instrument

14. The following options have been presented with respect to the mechanisms for implementing policies and measures:

- Regulations
- Economic instruments
- Voluntary agreements
- Education and training
- Research
- Information and advice programmes
- Performance indicators

15. The following options have been presented with respect to the policy objectives to be pursued by means of policies and measures:

- Enhancing the development, generation and use of renewable energy
- Increasing the use of waste heat from industrial facilities
- Increasing energy-efficiency (large-scale combustion plants, electricity generation, small-scale combustion plants, buildings, household appliances, appliances for entertainment and communications, air-conditioning, refrigeration, insulation)
- Increasing the use of energy audits and diagnostic assessments and the use of energy contracting (planning, implementation, financing and operation of energy supply by third parties)
- Reducing energy loss from distribution
- Reducing emissions from transport
- Reducing emissions from industry
- Reducing emissions from international bunker fuels
- Reducing emissions from agriculture
- Reducing emissions from forestry

- Reducing emissions from waste management
- Reducing methane emissions (extraction and transport of fossil fuels, coal mining)
- Reducing methane emissions through recovery and use (landfills, sewage, biogas)
- Reducing nitrous oxide ($N_2O$) emissions (industry, fertilization, animal husbandry, animal waste products)
- Reducing fluorocarbon emissions from refrigeration and air-conditioning equipment through recovery and recycling
- Reducing fluorocarbon emissions from refrigeration and air-conditioning equipment by minimizing leakage (during manufacture, installation, operation, and servicing, as well as leakage of these substances from the production of other chemicals)
- More rational land use and agriculture
- Raising the quality of sinks and reservoirs
- Dismantling fiscal and other benefits that promote conduct contrary to the objective of the protocol
- Developing new technologies
- Promoting fuel switching
- Encouraging municipal actions

16. The following options have been presented with respect to specific policies and measures that could be included in the instrument:

- Carbon dioxide ($CO_2$)/energy tax
- An internationally harmonized tax levied on greenhouse gas emissions combined with a financial mechanism
- Energy efficiency standards
- $CO_2$ emissions efficiency targets (e.g., greenhouse gas (GHG) emissions/per unit of gross domestic product (GDP))

- Energy least-cost planning
- Consumption-based accounting for heating, air-conditioning and hot water
- Lowering the average fuel consumption of cars to 5 l/100 km
- Dismantling the petrol tax exemption for aircraft fuel
- Dismantling the value added tax exemption for cross border traffic
- Establishing internationally agreed criteria for management, conservation and sustainable development of forests

**Distribution of commitments**

17. The AGBM must take a decision on whether or not all Annex I Parties will subscribe to the same commitments with respect to policies and measures under the instrument. It has been proposed that Annex I Parties with economies in transition might be treated differently from other Annex I Parties in this regard.

## B. Quantified emission limitation and reduction objectives within specified time-frames

**Guiding objectives**

18. It has been proposed that the objective contained in Article 2 of the Convention provides sufficient guidance and should be incorporated into the instrument. However, it has also been suggested that Parties participating in a protocol or another legal instrument should share a common recognition of the $CO_2$ concentration level thought to result in dangerous anthropogenic interference with the climate system.

**Legal character**

19. The AGBM must take a decision on the legal character of the QELROs that are to be included in the instrument. In this regard, the AGBM may wish to take into account the text of the Geneva Ministerial Declaration (see paragraph 3 above), which calls for an outcome to the Berlin Mandate process that encompasses, *inter alia*, "quantified legally-binding objectives for emission limitations and significant overall reductions within specified timeframes".

20. The following options have so far been proposed:

- The QELROs should be legally binding

- The QELROs should be legally binding, but a certain degree of flexibility should be allowed to Annex I Parties with economies in transition comparable to the stipulation in Article 4, paragraph 6, of the Convention

- The QELROs should be legally binding but should include substantial safety margins

- The QELROs should take the form of "hard commitments to achieve soft targets" (commitments would focus on the development of a programme, implementation of policies and measures, and reporting and review)

**Coverage**

21. Recalling that the Berlin Mandate (see FCCC/CP/1995/7/Add.1, decision 1/CP.1) is to be guided by "coverage of all greenhouse gases, their emissions by sources and removals by sinks and all relevant sectors", the AGBM must take a decision on the treatment of different greenhouse gas sources and sinks within QELROs. The following options have been presented:

- A single objective relating to all greenhouse gases through the use of a "basket" approach

- A single objective that would initially only relate to a specifically defined list of gases owing to the varying degrees of scientific knowledge and data availability with regard to the different greenhouse gases (additional emission sources would have to be treated separately)

- Different objectives for different gases, reflecting a gas-by-gas approach

- A separate objective to cover the reduction of emissions from international bunker fuels

A decision on how to treat greenhouse gas sinks within QELROs is also needed.

**Level and timing of QELROs**

22. The AGBM must take a decision on the level of the QELRO or QELROs to be included in the instrument as well as the time-frame within which the objective is to be achieved.

23. The following proposals link an emissions objective and a time-frame:

- Each Annex I Party would reduce its 1990 level of anthropogenic emissions of $CO_2$ by at least 20 per cent by the year 2005

- Each Annex I Party would adopt specific targets and timetables to limit or reduce emissions of greenhouse gases other than $CO_2$ that are not controlled by the Montreal Protocol, including targets and timetables for methane, $N_2O$ and fluorocarbons, in accordance with a programme of additional commitments to be negotiated subsequently

- Each Annex I Party would reduce $CO_2$ emissions by 10 per cent from 1990 levels by 2005 and 15-20 per cent from 1990 levels by 2010

- Each Annex I Party would reduce overall greenhouse gas emissions by a figure in the range of 5-10 per cent below 1990 levels by 2010

- Annex I Parties would reduce $CO_2$ emissions by 10-20 per cent from 1990 levels by 2010

- Annex I Parties would reduce $CO_2$ emissions by 20 per cent from 1990 levels by 2005, and by 50 per cent from 1990 levels by 2030

- Annex I Parties would together reduce total greenhouse gas emissions by an average of 1-2 per cent per year

- Annex I Parties would adopt greenhouse gas emissions paths converging eventually on similar levels of emissions per capita or per unit of GDP, leading to an overall emissions reduction within specified time-frames

- Annex I Parties that return greenhouse gas emissions to 1990 levels by the year 2000 would reduce emissions by 10 per cent by 2005, by 15 per cent by 2010 and by 20 per cent by 2020. Annex I Parties that fail to return greenhouse gas emissions to 1990 levels by 2000 would reduce emissions by 15 per cent by 2005, by 20 per cent by 2010 and by 25 per cent by 2020

24. As noted at the third session of the AGBM, there are two general views on the issue of time-frames (FCCC/AGBM/1996/5, para. 45):

- Some Parties have emphasized short- and medium-term goals (2005 and 2010) to promote early action, while recognizing that a longer-term perspective could complement these

- Some Parties, while noting the utility of short-term milestones, are more inclined to a longer time-horizon to optimize investment decisions

Of the proposals submitted, one makes reference to "medium-term" targets.

**Distribution of commitments**

25. The AGBM must take a decision on the distribution of QELRO commitments. The following options have been proposed:

- Each Annex I Party would have the same individual emission limitation and reduction objective (flat rate reduction)

- A collective emission limitation and reduction objective would be established for Annex I Parties, with differentiated commitments for individual Annex I Parties within a specified time-frame or time-frames

- Commitments could be differentiated among Annex I Parties in such a way that each Party would have a unique emissions limitation and reduction objective

- Annex I Parties with economies in transition could be granted a certain degree of flexibility comparable to the stipulation in Article 4, paragraph 6, of the Convention

- Annex I Parties with economies in transition would not have to meet specific QELROs but would have to put in place policies and measures to limit emissions

26. It has been proposed that differentation of commitments be based on the principle of ensuring that all Annex I Parties incur an equal percentage change in terms of their per person "gross national expenditure". It has been suggested that rules should be established to draw up a set of differentiated QELROs that would reflect this principle, and that those rules should make use of the following indicators:

- GDP growth of the economy

- population growth

- emissions intensity of GDP

- fossil fuel trade

- emission intensity of exports

27. There has also been a proposal that differentiation be based on a specific multi-criteria indicator that combines and attaches weights to three individual indicators ($CO_2$ equivalent emissions per unit of GDP, $CO_2$ equivalent emissions per capita, and GDP per capita) as in the following formula:

$$Y_i = A[x(B_i/B) + y(C_i/C) + z(D_i/D)]$$

where $Y_i$ is the percentage reduction of emissions for Party *i*. The relation of $B_i$ to B is $CO_2$ equivalent emissions per unit of GDP for Party *i* relative to the average in the Annex I Parties. The relation of $C_i$ to C is GDP per capita in Party *i* relative to the average in the Annex I Parties, while the relation of $D_i$ to D is $CO_2$ equivalent emissions per capita in Party *i* relative to the average of Annex I Parties. A is a scale factor to ensure that the desired overall reduction in emissions is achieved. The coefficients *x*, *y* and *z* are weights, which add up to a total of 1. The proposal indicates that the indicator for emission intensity ($B_i/B$) should be given more weight than the other two indicators.

28. Other factors that have been proposed as possible bases for taking decisions on differentiation include the marginal cost of emissions mitigation and the level of existing programmes to save energy and mitigate emissions.

29. Although a number of suggestions have been made with respect to criteria that could be used for the differentiation of commitments among Annex I Parties, it should be noted that some Parties have questioned whether it would be practicable to agree on the criteria and modalities for differentiation before COP 3.

**Flexibility**

30. The AGBM must take a decision on whether or not mechanisms that would provide Annex I Parties with some flexibility in meeting their QELROs should be included in the instrument. In this regard, the AGBM may wish to recall its conclusions from the third session, where "the importance of minimizing costs in achieving objectives was agreed" (FCCC/AGBM/1996/5, para. 48).

31. The following options for providing flexibility have so far been presented:

- Cumulative or aggregate targets covering a number of years
- Multiple-year rolling average targets
- Emissions banking
- Joint implementation

- Emissions trading

32. The following specific proposals have been made with respect to the treatment of joint implementation in the instrument:

- Making a commitment to monitor experience with activities implemented jointly (AIJ) and to discuss the relationship between the quantified emission objectives of Annex I Parties and the quantity of emission reductions achieved by AIJ

- Allowing developed country Parties and other Parties listed in "Annex X" to meet their commitments in a protocol or another legal instrument through joint implementation with Parties listed in "Annex X" and Parties that have provided notification of their intention to be bound by "Annex X" commitments on emission limitation and reduction objectives. (It has been proposed that the criteria for such joint implementation should be established once a decision has been taken on the pilot phase of AIJ.)

33. With regard to the treatment of emissions trading, there has been a proposal to consider a simple form of emissions trading, including the basis on which it could be established and operate. In this regard, it has been proposed that there would have to be an equitable initial emission allocation among the Parties undertaking QELRO commitments. Another proposal refers to the establishment of guidelines for an emissions trading regime.

## III. CONTINUING TO ADVANCE THE IMPLEMENTATION OF EXISTING COMMITMENTS IN ARTICLE 4.1

34. The AGBM must take a decision on what will be done to advance the implementation of existing commitments in Article 4.1 through the adoption of a protocol or another legal instrument. In this regard, the AGBM may wish to take into account the text of the Geneva Ministerial Declaration (see paragraph 3 above), which calls for an outcome to the Berlin Mandate process that encompasses, *inter alia*, "commitments for all Parties on continuing to advance the implementation of existing commitments in Article 4.1".

35. The AGBM may also wish to note that some work has already been done to advance the implementation of existing commitments in Article 4.1 through the development and approval of guidelines for the preparation of first national communications from non-Annex I Parties (FCCC/CP/1996/15/Add.1, decision 10/CP.2). In this regard, the AGBM may again wish to take into account the text of the Geneva Ministerial Declaration (see paragraph 3 above), which "welcome[s] the efforts of developing country Parties to implement the Convention and thus to address climate change and its adverse impacts and, to this end, to

make their initial national communications in accordance with guidelines adopted by the Conference of the Parties at its second session".

36. As noted at the third session of the AGBM, some Parties believe that the development of these reporting guidelines has sufficiently advanced the existing commitments in Article 4.1 for non-Annex I Parties, but other Parties believe all Parties should make further efforts to advance the implementation of Article 4.1 (FCCC/AGBM/1996/5, paras. 54 and 55). Some of the areas that have been identified for additional action, and proposals that have been made in those areas, are presented below.

**National inventories**

37. The following proposals have been made in this area, suggesting that all Parties could:

- Move to use full Intergovernmental Panel on Climate Change (IPCC) compatible methodology for preparation of inventories and provide greenhouse gas inventory information on an annual basis

- Identify and agree to implement specific actions to foster bilateral, regional and global cooperation to facilitate development of national inventories

**Climate change response strategies**

38. The following specific proposals have been made in this area, suggesting that all Parties should commit to:

- Continuing and additional systematic support for efforts to develop national action plans following the appropriate guidelines for national communications

- Making a strengthened commitment to update national programmes

- Redoubling efforts to adopt and implement "no regrets" measures

- Identifying and agreeing to implement specific actions to foster bilateral, regional and global cooperation to facilitate formulation and implementation of national programmes of measures to mitigate and adapt to climate change

**Technology development and transfer**

39. The AGBM may wish to take into account the text of the Geneva Ministerial Declaration (see paragraph 3 above), which calls for "commitments to a global effort to speed up the development, application, diffusion, and transfer of climate-friendly technologies, practices and processes; in this regard, further concrete action should be taken".

40. Specific proposals that have been made with respect to technology transfer indicate that the instrument could:

- Commit Annex I Parties to ensuring that the best available technologies, practices and processes that control, reduce or prevent anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol in all relevant sectors ... are expeditiously transferred to developing country Parties under fair and most favourable conditions

- Commit Annex I Parties to ensuring that every practicable step is taken to support the development and enhancement of the endogenous capacities and technologies of developing country Parties

- Develop further the commitments under the Convention entered into by Annex II Parties to promote, facilitate and finance, as appropriate, the transfer of or access to, environmentally sound technologies and know-how

- Identify and agree to implement specific actions to foster bilateral, regional and global cooperation to increase the development, application and diffusion, including transfer, of technologies, practices and processes that control, reduce or prevent greenhouse gas emissions

- Expand programmes aimed at developing, diffusing and deploying climate friendly technologies, including systematic efforts to identify and remove barriers to technology diffusion and enhancing the role of international financial institutions in responding to the threat of climate change

**Adaptation**

41. It has been proposed that all Parties should participate fully in the work of international bodies (such as the United Nations Environment Programme (UNEP) in examining, assessing and developing strategies for adaptation to climate change.

**Climate change considerations**

42. It has been proposed that all Parties identify and agree to implement a strategy to ensure climate change considerations are taken into account in all relevant government policy areas and initiatives.

**Research and development/exchange of information**

43. The following proposals have been made in this area:

- All Parties could participate fully in the World Climate Programme and the Climate Agenda

- All Parties could commit to intensifying research, extending scientific cooperation, and ensuring the processing, evaluation and transmission of scientific knowledge

The AGBM may wish to note that Article 5 of the Convention is also relevant in this context.

**Education, training and public awareness**

44. One proposal made in this area is that all Parties support and participate in the Start initiative of the International Geosphere/Biosphere Programme and the educational programmes of the World Meteorological Organization (WMO)/the United Nations Environment Programme (UNEP). The AGBM may also wish to note that Article 6 of the Convention is also relevant in this context.

**Communication of information**

45. The following proposals have been made in this area:

- All Parties could identify in their national communications any of their policies and practices that are referred to in Article 4.2(e)(ii) of the Convention

- All Parties could develop and implement indicators of climate change in the context of sustainable development and include them in national communications

- There could be in-depth reviews of non-Annex I Parties' national communications, along the lines of existing arrangements for Annex I Parties

**Financial assistance**

46. The AGBM may wish to take into account the text of the Geneva Ministerial Declaration (see paragraph 3 above). The Declaration "call[s] on the [Global Environment Facility] GEF to provide expeditious and timely support to these [developing country] Parties and initiate work towards a full replenishment in 1997". It also "recognize[s] that the continuing advancement of existing commitments by developing country Parties, in the context of their national priorities for sustainable development, requires determined and timely action, in particular by Annex II Parties. Access to financial resources and to environmentally sound technologies consistent with Articles 4.3, 4.4, 4.5, and 4.7 will be most critical".

## IV. POSSIBLE FEATURES OF A PROTOCOL OR ANOTHER LEGAL INSTRUMENT

### Communication and review of information

47. The AGBM must take a decision on how information related to the implementation of new commitments under the instrument will be communicated and reviewed. At its fourth session, the AGBM conclusions reflected support for a single process for the communication and review of information under the Convention and the new instrument (FCCC/AGBM/1996/8, para. 28). This view has also been advanced in a number of proposals from Parties.

48. Several proposals have supported strengthening the existing communication and review process, including suggestions for:

- Enhanced descriptions of policies, programmes and measures implemented to meet the new commitments, as well as a specific estimate of their effects, including the resulting projected emissions

- Inclusion of information on costs and benefits of actions taken and an indication of how these policies and measures form part of a least-cost implementation strategy

- Inclusion of the results of reviews of national policies and practices as referred to in Article 4.2(e)(ii), and any significant changes identified

- Making the current in-depth review process more like the Organisation for Economic Co-operation and Development (OECD) Country Environmental Performance Reviews

49. The AGBM may also wish to consider how the character and content of the communication and review process might be affected by some of the options being contemplated for commitments under policies and measures and QELROs (for example, legally binding QELROs, emissions trading, internationally coordinated or harmonized measures, compliance procedures).

50. The AGBM must also take a decision on the frequency of reporting under the instrument, including whether all information needs to be reported with the same frequency. The following proposals have been presented:

- Each Annex I Party would submit an initial communication within a year of the entry into force of the protocol for that Party, with the subsequent frequency of reporting to be determined at a later date

- Annex I Parties would submit an initial communication within six months of the entry into force of the protocol for that Party, while each Party not so listed would make its initial communication within three years of the entry into force of the protocol for that Party, with the subsequent frequency of reporting to be determined at a later date

**Review of the commitments**

51. The AGBM must take a decision on how the adequacy of commitments included in the instrument will be reviewed in the future. In this regard, the AGBM may wish to take into account the text of the Geneva Ministerial Declaration (see paragraph 3 above), which indicates that the outcome of the Berlin Mandate should include "a mechanism to allow the regular review and strengthening of the commitments embodied in a protocol or other legal instrument".[2]

52. The following proposals have been made on this matter:

- Commitments of Annex I Parties would be reviewed no later than five years after the entry into force of the protocol, and thereafter at regular intervals to be determined at a later date

- A first review, and appropriate action based on that review, would take place no later than 31 December 2002, with subsequent review and adoption of appropriate action to be determined at a later date

53. It has also been proposed that, if the instrument contains differentiated QELROs, a review of commitments should encompass periodic review and possible adjustment of both country and collective commitments in the light of new scientific knowledge, changes in national circumstances, and the special situation of economies in transition. Parties would be able to seek a review of their commitments at any time.

**Annexes**

54. The following proposals have been made for the creation of new annexes within a protocol or another legal instrument:[3]

- Annexes on policies and measures

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[2] The AGBM may wish to consider how, or if, these proposals relate to the existing commitment to undertake a second review of the adequacy of the commitments in the Convention by no later than 31 December 1998.

[3] If the new legal instrument is an amendment to the Convention, acceptance of some of these proposals would require that Article 16.1 of the Convention be amended.

- Annexes on methodological issues (e.g., global warming potentials (GWPs)
- Lists of participating countries
- Lists of QELROs and time-frames
- Annexes that present detailed information on sources, measures and costs by country and by sector

55. There have also been suggestions that the procedures for making amendments to annexes should be simplified and streamlined to allow for regular review and updating of the commitments outlined in the annexes. One specific proposal that has been made for the amendment of annexes would see them both adopted and amended on the basis of a two-thirds majority vote of the Parties present and voting when a consensus could not be reached.

**Voluntary application of commitments by non-Annex I Parties**

56. The following proposals have been made for mechanisms that would allow non-Annex I Parties to ratify, accept, approve or accede to Annex I Party commitments in the instrument:

- Any Party could notify the Depositary that it intends to be bound by either the commitments relating to policies and measures and/or the commitments relating to QELROs, and thereby also accept the commitments relating to the reporting of information

- Any Party could notify the Depositary that it intends to be bound by the commitments of Annex I Parties in a protocol or another legal instrument

**Institutions and institutional support**

57. The AGBM must take a decision on whether or not new institutions and mechanisms need to be created to service the instrument. At its fourth session, the AGBM "reaffirmed the principle of institutional economy and the need to avoid the proliferation of new bodies and mechanisms under a protocol or another legal instrument. Accordingly, it agreed that the new instrument should, to the greatest extent possible, be served by the existing institutions and mechanisms of the Convention, including in particular the Convention secretariat and possibly the subsidiary bodies. ... The AGBM expressed interest in exploring the possibility of having a single Conference of the Parties and a streamlined budgetary process for the Convention and the new legal instrument, subject to the understanding that only Parties to the new legal instrument would be able to vote on decisions relating to that instrument" (FCCC/AGBM/1996/8, para. 28). Subsequently, it has been proposed that the Convention's financial mechanism and the entity or entities entrusted with its operation should serve as the financial mechanism and entity or entities for the purposes of the instrument.

58. While there have been few proposals for the creation of new institutions in the areas discussed by the AGBM at its fourth session, the following proposals have been put forward:

- In the case of a protocol, a separate Conference or meeting of the Parties to the protocol, could be held in conjunction with meetings of the Conference of the Parties to the Convention

- In the case of a protocol, a mechanism to facilitate Annex I Parties' coordination of measures developed to achieve the objective of the Convention could be created

- A mechanism to accumulate joint implementation experience could be created

- An Implementation Committee could review, at the request of a Party or Parties, the secretariat, or a Party in respect of itself, compliance with its obligations under the protocol and make regular reports to the Conference of the Parties

It has been proposed that the institutional and administrative costs arising from the instrument be borne by the Parties. The AGBM may also wish to consider the institutional implications of any mechanisms that would provide flexibility in meeting the commitments contained in the instrument (e.g., emissions trading, joint implementation).

**Dispute settlement, resolution of questions and compliance**

59. Some of the proposals note that Article 14 of the Convention on settlement of disputes could be applied to the new instrument, possibly with some modifications.

60. The AGBM may wish to consider any linkage with Article 13 of the Convention and the work of the Ad Hoc Group on Article 13 (see FCCC/CP/1996/15/Add.1, decision 5/CP.2). Furthermore, one specific proposal in this area is that, in the case of a protocol, a provision could be included enabling the establishment of an Implementation Committee (see paragraph 58 above) whose reviews would be simple, facilitative, cooperative, non-judicial and transparent.

61. It has been suggested that the AGBM needs to consider what processes or mechanisms may be required to ensure compliance with the legal commitments in the instrument.

**Other clauses**

62. The AGBM must take decisions on a range of other clauses that will make up the instrument (for example, right to vote, depositary, signature, ratification,

acceptance, approval or accession, reservations, withdrawal). Many of these clauses can be dealt with in one of the following three ways:

- Incorporated by reference to the Convention (or "cross-application")
- Reproduced from the Convention in the instrument
- New text could be agreed

63. The following proposals have been made with regard to entry into force:

- Entry into force would occur 90 days after the thirtieth ratification, and subsequent to that it would enter into force for each Party 90 days after it had ratified the protocol
- Entry into force would require a specific number of ratifications, including a specific number of ratifications by Parties that would undertake specific QELRO commitments
- The instrument could explicitly authorize a country to provisionally apply its terms before it enters into force for that country

64. Only Parties to the instrument can have decision-making authority with respect to that instrument (see Article 17.5 of the Convention). It has also been proposed that, in the case of a protocol, non-parties to the protocol could not serve as officers for an institution serving the protocol.

65. In the case of a protocol, it has been proposed that if consensus cannot be reached on a proposed amendment, the amendment will be adopted by a two-thirds majority vote of the Parties present and voting.

**Action after COP 3**

66. It has been proposed that the instrument would:

- Establish a process for further negotiations aimed at further contributing to achieving the ultimate objective of the Convention
- Provide for further consideration of future steps toward the objective of the Convention

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